

ATTACHMENT 2 TO APPENDIX 1

LETTERS, 23 JUNE 2005 AND 11 MAY 2004, FROM  
NATURAL RESOURCES CONSERVATION SERVICE  
TO MISSISSIPPI LEVEE  
BOARD

## United States Department of Agriculture



Natural Resources Conservation Service  
Greenwood Area Office  
P. O. Box 1160  
Greenwood, MS 38935-1160  
(662)453-2762 (662)453-7841FAX

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June 23, 2005

Mr. Peter Nimrod, Chief Engineer  
Mississippi River Levee Board  
P.O. Box 637  
Greenville, MS 38702-0637

Dear Mr. Nimrod,

This is a follow up letter of our meeting with Mr. Kent Parish of the U.S. Corps of Engineers on May 12, 2005, in Vicksburg.

Since the beginning of the Farm Bill Program in 1985, which allowed for land retirement, we have enrolled 105,028 acres in the Wetland Reserve Program in the Mississippi Delta. Additionally, we have provided technical services to the Farm Service Agencies enrolling 167,109 acres in the Conservation Reserve Program. All of these acreages are established to bottomland hardwoods. Each year we enroll an additional 8 to 9,000 acres in the Wetland Reserve Program and plant that acreage in hardwood seedlings.

Since 1985, we have had approximately 1,105 acres converted from woodlands to croplands in the 13 delta or part delta counties that make up our area. As you can see, this is a very small amount of land converted from woodland to cropland. I do not foresee this trend changing in the future. I believe that there will continue to be many acres planted to hardwood trees in the Mississippi Delta.

If I can provide more information, please let me know.

Sincerely,

A handwritten signature in dark ink, appearing to read "James E. Johnson".

James E. Johnson  
Area Conservationist

## United States Department of Agriculture



Natural Resources Conservation Service  
Suite 1321, Federal Building  
100 West Capitol Street  
Jackson, MS 39208

May 11, 2004

Board of Mississippi Levee Commissioners  
James E. Wanamaker, Chief Engineer  
P. O. Box 637  
Greenville, MS 38702-0637

This is in response to your letter requesting the position of NRCS on how the Swampbuster provisions of the Farm Bill would impact flood control activities in the Delta conducted by a third party such as the US Army Corps of Engineers, NRCS, MS Levee Board, etc.

In the Code of Federal Regulations (CFR), Title 7, Part 12.5 (b) (vii) (D) provides that activities of a water resource district, drainage district, or similar entity will be attributed to all persons within the jurisdiction of the district or other entity. Accordingly, where a person's wetland is converted due to the actions of the district or entity, the person shall be considered to have caused or permitted the drainage.

Clearly, a third party exemption does not apply to community-wide drainage projects. It is limited to actions of predecessors in interest and individuals, not drainage districts, Corps, NRCS projects or similar entities. As directed by CFR activities resulting in converted wetlands (CW), as defined in statute, will be attributed to the persons benefiting from the project.

The specific question you raised is "if we have forested jurisdictional wetlands and a project is completed and this forestland is no longer a jurisdictional wetland and the landowner came in and cleared the trees would Swampbuster prevent him from getting additional farm benefits?" As defined in CFR, Title 7, Part 12.2 a Converted Wetland is a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow and circulation of water) for the purpose of or to have the effect of making possible the production of an agricultural commodity. To answer your question, USDA program participant making production possible will be in violation of the Wetland Conservation Provisions. The actual "trigger" in the case of forested sites is the removal of woody vegetation, not the drainage.

If you need any additional information, please advise.

A handwritten signature in cursive script, appearing to read "Al Garner".

Al Garner  
Assistant State Conservationist

cc: Homer L. Wilkes, State Conservationist, NRCS, Jackson, MS  
James Johnson, Area Conservationist, NRCS, Greenwood, MS